

**CITY OF ARLINGTON**

**ORDINANCE NO. 221**

**AN ORDINANCE AMENDING ORDINANCE 168, THE ARLINGTON SUBDIVISION ORDINANCE TO ALLOW FOR ADMINISTRATION OF SAID ORDINANCE RELATING TO PREMATURE SUBDIVISIONS, DENIAL OF PLATS, VARIANCES AND GENERAL ORDINANCE ADMINISTRATION BY ADDING SECTION 11.**

- I. THE CITY COUNCIL OF THE CITY OF ARLINGTON, MINNESOTA TO PROMOTE THE PUBLIC SAFETY, HEALTH AND WELFARE, HEREBY ORDAINS ORDINANCE 168 SHALL BE AMENDED BY ADDING SECTION 11 AS FOLLOWS:**

**SECTION 11: ORDINANCE ADMINISTRATION**

**SUBDIVISION 1. FINDINGS OF FACT.**

- A. Planning Commission Recommendation. The Planning Commission upon making its formal recommendation to the City Council under this Title and pertaining specifically to the request for subdivision of land shall make said recommendation through resolution of the Commission. The recommending resolution shall contain findings of fact pursuant to this Ordinance.
- B. City Council Action. The City Council upon taking a formal action under this Title and pertaining specifically to the request for subdivision of land shall do so by resolution of the City Council. The resolution shall contain findings of fact pursuant to the following and as outlined in this Title.
- C. Recommendation/official action pertaining to requests for variance from this Title shall include findings of fact pursuant to those identified in this Title.
- D. Premature Subdivisions. Any preliminary plat of a proposed subdivision deemed premature for development shall be denied by the City Council. A subdivision may be deemed premature should any one or more of the conditions set forth in the following provisions exist. The burden shall be upon the applicant to show that the proposed subdivision is not premature.
  - 1. Lack of adequate drainage: A condition of inadequate drainage shall be deemed to exist if:
    - a. Surface or subsurface water retention/detention and runoff is such that it constitutes a danger to the structural security of the proposed development or flood of the subdivision or downstream property.
    - b. The proposed subdivision will cause pollution of water sources or damage from erosion and siltation on downhill or downstream land.
    - c. The proposed site grading and development will cause siltation on downstream land.

- d. Factors to be considered in making these determinations shall include, but shall not be limited to: average rainfall for the area; the relation of the land to flood plains; the nature of soils and subsoils and their ability to adequately support surface water runoff and waste disposal systems; the slope of the land and its effect on effluents; and the presence of streams as related to effluent disposal.
2. Lack of Adequate Water Supply: A proposed subdivision shall be deemed to lack an adequate water supply if:
  - a. There is inadequate capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the Arlington Comprehensive Plan, as may be amended.
  - b. The orderly extension of municipal drinking water is not feasible or is not proposed as part of subdivision improvements.
3. Lack of Adequate Roads or Highways to Serve the Subdivision: A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:
  - a. Roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare, or aggravate an already hazardous condition, and when, with due regard to the advice of the City Engineer, Sibley County Highway Engineer and/or the Minnesota Department of Transportation, said roads are inadequate for the intended use; or
  - b. The traffic volume generated by the proposed subdivision would create unreasonable traffic congestion or unsafe conditions on roadways existing at the time of the application or proposed for completion.
4. Lack of Adequate Waste Disposal Systems: A proposed subdivision shall be deemed to lack adequate waste disposal systems if:
  - a. There is inadequate sewer capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the Arlington Comprehensive Plan, as may be amended.
  - b. The orderly extension of municipal sanitary sewer is not feasible or is not proposed as part of subdivision improvements.
5. Provision of Public Improvements/Services: If public improvements, such as recreational facilities, electrical facilities, streets and utilities and/or public administration and/or public protection services such as police and fire service reasonably necessitated by the subdivision and which must be provided at public expense, cannot be reasonably provided within the next two (2) fiscal years the proposed subdivision shall be deemed premature.

6. Threat to Environmentally Essential Areas: The proposed subdivision is inconsistent with policies and standards of the City, the County, the State, or Federal Government relating to environmentally sensitive areas and protections thereof.
  7. Inconsistency With Comprehensive Plan: The proposed subdivision is inconsistent with the purposes, objectives and recommendations of the duly adopted Comprehensive Plan of Arlington, as may be amended.
  8. Inconsistent with Capital Improvement Plans. A proposed subdivision shall be deemed inconsistent with capital improvement plans when improvements and/or services necessary to accommodate the proposed subdivision have not been programmed in the City, County or other regional capital improvement plans. The City Council may waive this criterion when it can be demonstrated that a revision to capital improvement programs can be accommodated.
- E. Disqualification/Denial of Plats. The City Council may deny the subdivision if it makes any one or more of the following findings:
1. That the proposed subdivision qualifies as a premature subdivision under Section 11.1(D) of this Title.
  2. If deemed a 'premature subdivision' the proposed subdivision shall be denied.
  3. That the proposed subdivision is in direct conflict with adopted applicable local control (e.g. Zoning Ordinance; Subdivision Ordinance) and/or general or specific official plans of the City, County or Region.
  4. That the physical characteristics of the site, including but not limited to, topography, percolation rate, soil conditions, susceptibility to erosion and siltation, susceptibility to flooding, water storage, drainage and retention, are such that the site is not suitable for the type of development, design, or use contemplated.
  5. That the site is not physically suitable for the proposed density of development.
  6. That the design of the subdivision or the type of improvements are likely to cause serious public health concerns.
  7. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage.
  8. That the design of the subdivision or the type of improvements will conflict with easements of record or with easements established by judgment of a court.
  9. That the proposed subdivision, its site, or its design adversely affects the flood-carrying capacity of the floodway, increases flood stages and velocities, or increases flood hazards within the floodway fringe or within other areas of the City.
  10. That the proposed subdivision is inconsistent with the policies and standards for defined shoreland and/or wetland.

**SUBDIVISION 2. CONDITIONAL APPROVAL.**

- A. The City may condition approval on the construction and installation of sewers, streets, electric, gas, drainage and water facilities, and similar utilities and improvements or, in lieu thereof, on the receipt by the municipality of a cash deposit, certified check, irrevocable letter of credit, or bond in an amount and with surety and conditions sufficient to assure the municipality that the utilities and improvements will be constructed or installed according to the specifications of the municipality. The City may also condition approval on compliance with other requirements reasonably related to the provisions of the regulations and to execute development contracts embodying the terms and conditions of approval.
- B. The City may not condition the approval of any proposed subdivision or development on an agreement to waive the right to challenge the validity of a fee.
- C. This paragraph must not be construed to preclude the municipality from conditioning approval of any proposed subdivision or development on an agreement to waive a challenge to the cost associated with City installed improvements of the type described in MN. Statute 429.

### **SUBDIVISION 3. VARIANCES, CITY COUNCIL APPROVAL, STANDARDS.**

- A. Findings: The City Council may approve a variance from the minimum standards of this Ordinance (not procedure provisions) when, in its opinion, exceptional and undue hardship may result from strict compliance. In approving any variance, the City Council shall prescribe any conditions that it deems necessary to or desirable to the public interest. In making its approval, the City Council shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. A variance shall only be approved when the City Council finds that each and every one of the following apply:
  - 1. That there are special circumstances or highly unique conditions affecting the property such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his/her land.
  - 2. That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which the property is situated.
  - 3. That the granting of the variance will not increase the flood hazard or flood damage potential.
  - 4. That the use proposed by the applicant would not result in a stage increase violating Minnesota Statute 103F, as amended from time to time, and any applicable requirements imposed by FEMA.
  - 5. That the variance is to correct inequities resulting from an extreme physical hardship such as topography.
  - 6. Hardships relating to economic difficulties shall not be considered for the purpose of granting a variance.

7. That the hardship is not a result of an action or actions by the owner, applicant, or any agent thereof.
8. The variance sought is the least variance required.

B. Procedures:

1. Request for variances, as provided within this Section, shall be filed with the City on an official application form. Such application shall be accompanied by a fee as provided for by City Council ordinance. Such application shall also be accompanied by five (5) large scale copies and ten (10) reduced scale (not less than 11" x 17") copies of detailed written and graphic materials fully explaining the proposed change, development, or use. If, in the opinion of the Zoning Administrator, reduced scale drawings are determined to be illegible, the submission of larger scale materials shall be required. The scale of such materials shall be the minimum necessary to endure legibility. The request for variance shall be placed on the agenda of the Planning Commission meeting occurring after the date of submission of the application. The request shall be considered as being officially submitted when all the information requirements are complied with.
2. Proof of Ownership or Authorization: The applicant shall supply proof of title and the legal description of the property for which the variance is requested, consisting of an abstract of title or registered property abstract currently certified together with any unrecorded or equitable ownership interest and, if applicable, supply documented authorization from the owner(s) of the property in question to proceed with the requested variance.
3. Upon receipt of said application, the City shall set a public hearing following proper hearing notification as applicable. Notice of said hearing shall consist of a legal property description and description of request, and be published in the official newspaper at least ten (10) days prior to the hearing. Written notification of said hearing shall be mailed to surrounding area property owners at least ten (10) days prior to the hearing. Requests affecting and located within platted areas of the City shall be noticed to all property owners at least ten (10) days prior to the hearing. Requests affecting and located within nonplatted areas of the City shall be noticed to all property owners within three hundred fifty (350) feet of the outside boundary of the property in question. A copy of the notice and a list of the property owners and addresses to which the notice was sent shall be attested and made a part of the record of the proceeding.
4. For properties within the Shoreland Overlay Districts and/or the Floodway or Flood Fringe Overlay Districts, the City shall submit to the Minnesota Department of Natural Resources Area Hydrologist a copy of the application for proposed variances sufficiently in advance so that the Department will receive at least ten (10) day's notice of the hearing.
5. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Section provided a bona fide attempt has been made to comply with the notice requirements of this Section.

6. The Zoning Administrator shall instruct the appropriate staff persons to prepare technical reports where appropriate, and provide general assistance in preparing a recommendation on the action to the Planning Commission.
7. The Planning Commission, City Council and/or Zoning Administrator shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning operational factors, said information to be declared necessary to establish performance conditions in relations to all pertinent sections of this Ordinance. Failure of an applicant to supply all necessary supportive information may be grounds for denial of the request.
8. The applicant or a designated representative thereof shall appear before the Planning Commission and/or City Council to answer questions concerning the proposed variance.
9. The City Council shall reach a decision within sixty (60) days after the receipt of a complete application.
10. The City Council shall not act upon a variance or appeal until they have received a staff report, with findings of fact and a recommendation, and a Planning Commission recommendation to the City Council.
11. Whenever an application for a variance has been considered and denied by the City Council, a similar application and proposal for the variance affecting the same property shall not be considered again by the City Council for at least one (1) year from the date of its denial except as follows:
  - a. Applications are withdrawn prior to the City Council taking action on the matter.
  - b. If the City Council determines that the circumstances surrounding a previous application have changed significantly.
  - c. If the City Council decides to reconsider the matter by a majority (3/5ths) vote of the entire City Council, whether present, absent, or abstaining.

#### **SUBDIVISION 4. AMENDMENTS.**

The provisions of this Ordinance may be amended by the City Council following a legally advertised public hearing before the Planning Commission and in accordance with the law, including the rules and regulations of any applicable state or federal agency.

#### **SUBDIVISION 5. FEES.**

- A. Fees and charges, as well as expenses incurred by the City for engineering, planning, legal, and other services related to the processing of applications under this Ordinance shall be established via ordinance approved by the Council and collected by the City Administrator for deposit in the City's accounts. Fees shall be established for the

processing of requests for platting, major and minor subdivisions, review of plans, and such other subdivision-related procedures as the Council may from time to time establish. The Council may also establish charges for public hearings, special meetings, or other such Council actions as are necessary to process applications.

- B. Such fees, charges and estimated expenses (as well as a deposit, if so required by the Zoning Administrator) shall be collected prior to City action on any application. All such applications shall be accompanied by a written statement between the City and the applicant/landowner (when the applicant is not the same person or entity as the landowner, both the landowner and the applicant must sign the agreement) whereby the applicant/landowner agrees to pay all applicable fees, charges and expenses as set by the Council as provided above, and which allows the City to assess the above fees, charges and expenses against the landowner if such monies are not paid within thirty (30) days after a bill is sent to the applicant/landowner.
- C. These fees shall be in addition to building permit fees, inspection fees, trunk storm water facility costs, zoning fees, charges, expenses and other such fees, charges and expenses currently required by the City or which may be established in the future.

**SUBDIVISION 6. VIOLATION/ENFORCEMENT.**

- A. Any person violating any provision of this Title shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment not exceeding ninety (90) days, or both. Each day a violation is allowed to continue, it shall be construed as a separate offense. Compliance with the terms of this ordinance may be obtained by injunctive relief in proceedings instituted by the City in a court of competent jurisdiction.
- B. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation, including but not limited to, the issuance of administrative citations as authorized by the City of Arlington.

**II. EFFECTIVE DATE.** This Ordinance is effective upon its adoption and publication as prescribed by law.

Adopted by the City of Arlington on the 4<sup>th</sup> day of February, 2008.

Attest:

/s/ James R. Kreft  
James R. Kreft, Mayor

/s/ Matthew Jaunich  
Matthew Jaunich, City Administrator

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Second Reading: February 4, 2008  
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